IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2088 of 2006.

M/s.Philips India Limited. ... Petitioner.

V/s.

Kishor S. Lad and others. ... Respondents.

E.P.Bharucha, senior counsel with Ms.Vasanti Kunder and V. Parkar for the petitioner.

Arshad Shaikh for the respondents

CORAM : V.C.DAGA, J.

DATED : 20th April 2006.

P.C. :

Heard learned counsel for the rival parties. Perused petition.

2. This petition is directed against the order dated 15th February, 2006 to the extent it rejects an application moved by the petitioner marked as Exh.C-9 in Reference (IDA) No. 30 of 2005 in the

proceedings before the Industrial Tribunal, Mumbai.

3. The petitioner herein has objected to the representation of Mr.K.S.Lad and others contending that they have no right to represent second party. The Industrial Court, for the reasons recorded in the order; relying upon the judgment of the Apex Court in the case of ***Pradeep Port Trust*** **v.** ***Their Workmen***, AIR 1977 SC 36, rejected the said application.

4. The review of the order dated 15th February, 2006 sought by the petitioner by filing application (Exh.C-11) also came to be rejected by the Industrial Tribunal by subsequent order dated 3rd March, 2006 for the reasons recorded therein.

5. Both the above orders are the subject matters of this petition filed under Articles 226 and 227 of the Constitution of India.

6. Having heard rival parties, without going into the niceties of the submissions made, I must point out that Mr.Bharucha tried to build his submissions taking advantage of certain situations of which one may not find answer on the text of section 36 of the Industrial Disputes Act, 1947 ("Act" for short). Realising this situation, the Apex Court in the case of ***Pradeep Port Trust*** (supra)

and this Court in the case of ***K.K.Khadilkar v. Indian Hume Pipe Co.Ltd., Bombay***, AIR 1967 Bom. 521 ruled that section 36 of the Act is not exhaustive. All the submissions made by Mr.Bharucha are answered generally in the case of ***Pradeep Port Trust*** (supra) and ***K.K.Khadilkar*** (supra) and particularly by the Division Bench of this Court in the case of ***Perfect Papers & Steel Converters P.Ltd.*** **v.** ***The Bombay National General Workers' Union***, 1989 I CLR 492; and by another unreported judgment in Writ Petition NO.2963/1999 (***Workers of Bank of India*** *v.* ***Bank of India***) decided on 26th October, 1990 delivered by Mr.D.R.Dhanuka, J. (as he then was). All these judgments in unequivocal terms lay down that section 36 of the Act is not exhaustive and it is open for the Tribunal under the Act to permit a person to get himself represented by any other person that he may choose since the right of the party to get represented before any Court or Tribunal itself is a fundamental right. Thus, it is now well settled that it is open for the Tribunal under the Act to permit a person to be represented by any other person of his choice, even though such person of his choice may not strictly fall in any of the categories specified in section 36 of the Act.

7. The Division Bench Judgment is very much binding on me. The view taken by the learned

single Judge based on the Division Bench judgment is also binding on me. On independent examination of law, I fully concur with the view taken by the learned single Judge (Mr.Dhanuka, J.) of this Court in the case of ***Workers of Bank of India*** *v.* ***Bank of India*** (supra).

8. At this juncture, in order to keep the record straight and in order to avoid any technical objection in future, all the respondents are directed to file simple authority letter authorising any person or persons amongst them to represent their interest before the Tribunal in consonance with the judgments referred to hereinabove.

9. Since the petition was heard on more than two occasions, time to file written statement must have expired as such it would be reasonable to extend time to file the consolidated written statement by another three weeks from today in which petitioner shall raise all legal and factual preliminary objections as well as their challenges on merits which the Industrial Tribunal shall decide after recording of evidence of the parties on all issues exercising its own discretion as expeditiously as possible, preferably, within the time frame fixed by this Court in the earlier round of litigation.

10. In the result, with the above observations, petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.)